Grate

Victory to Service Security

MADRAS HIGH COURT'S JUDGEMENT

IN

ANANTANARAYANAN'S CASE

(Railway Assistant Bridge Inspector, Pakala)

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(Railway Labour Union Publications.)

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Price As 3

FORWARD

A MILE-STONE IN THE STRUGGLE FOR SECURITY OF SERVICE.

The most interesting and illuminating Judgement of the Honourable Mr. Justice Balakrishna Iyyer of the Madras High Court reproduced here in full requires no introduction nor comments. His Lordship has dealt with the subject in its entirety and in a manner understandable to anyone, even the layman.

Atlast, after five years of the promulgation of the "Safe-guarding of National Security Rules, 1949," the men and women of the Government Services have got a great relief from the menace of delibrate Victimisation by authorities under the pretext of Political and Trade Union reasons. In 1949, while under the Governor-Generalship of Rajaji, these Rules were promulgated by the centre to deal with Govt, Servants engaged in "Subversive activities prejudicial to National Security". But the Rules did not define "Subversive activities" and "activities prejudicial to National Secutity". It was left to the executive authorities to define these things in the way they liked.

During the last five years above 500 employees of the Govt. Services like Railways, Docks, Posts and Telegraphs, Provincial Services, Civilian organisations of the Defence Departments etc were discharged or removed from service

under this Rule. The brunt of it was borne by the Railways with its quata of 300 men. Still over 50 are kept under suspension whose cases are pending for the last five years.

A nation wide agitation was conducted for the with— drawl of these Rules and for the re-instatement of all victimised. Twice the matter came up in the Parliament for discussion in the form of Private Members Resolutions, once moved by me and subsequently by Sri. Hiren Mukerjee The Home Minister and the Railway Minister refused to withdraw these Rules nor to re-instate the Victimised. The Leaders of the opposition Parties met the Railway Minister Mr. Lal Bahadur Shastry requesting him to sympathetically re-consider the cases comming under these Rules and Jo re-instate the men. So for no tangible result has been achieved. The Ministry of Railways advised by the old Bureaucratic Railway Board refused to change its original attitude inspite of repeated requests by a large number of Members of Parliament on the floors and outside.

It is in this back ground that the Hon'ble Mr. Justi Balakrishna Iyer's judgement is to be appriciated. directly tells the Government that what all they have in classifying "Subversive acttvities" and "activities pre cal to National Security" are erroneous and malafide. Hon'ble Judge himself answers all the six charges levelled against Mr. Ananthanarayanan, the Asst. Bridge Inspector, Pakkala and states that none of the charges are specific and nothing illegal has been done by the employee prejudicial to the National Secutiry. For the first time the Hon'ble Judge defines as to what aught to be "Subversive activities" under law. HIS LGRDSHIP OPINED THAE IT IS NO OFFENCE ON THE PART OF A GOVT. SERVANT TO BE A MEMBER OF THE COMMUNIST PARTY, WHICH IS A LEGAL BODY. The brilliant analysis of His Lordship

of the hollowness of the six charges is a mile stone in establishing the Secutity of services of Govt. Employees who are suspected and taunted by different Political Parties in this country.

As a result of this Judgement not only that Sri. Ananthanarayanan got back his job but similar Victimisation done so for becomes a matter for immediate reconsideration. The hundreds removed from Service must, in fairness, be re-instated forthwith. Let us hope that good counsel will prevail upon the Ministries of Railways and Home to act up to the Spirit of this Judgment and grant the elementary Security to the thousands of Govt. servants. Let not political bias blind their eyes.

I strongly recomend the full text of the Judgement for careful studies by one and all and particularly by Govt. employees as it is one directly strengthening their Security of Service. At the stme time I also would like to warn them that if they fail to defend the rights granted by the Court, the Govt, would try to deny it to them by other means.

UNITE AND DEFEND YOUR RIGHTS.

Golden Rock,
15-2-1955.

K. Ananda Nambiar,
General Secretary,
S. Railway Labour Union.

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TERMINATION OF SERVICES,
UNDER
RAILWAY SERVICES
(Safeguarding of National Security)
RULES, 1954, HELD INVALID.

DETAILS OF JUDGEMENT
OF THE
HIGH COURT OF MADRAS.

ORDER: W. P. No. 507 of 1954 **DATED: 3rd Dec. 1954**

Allowing with costs the petition for issuing of a Writ of Certiorari calling for the records in PBE-Con-*83*, dated *15-7-1954* on the file of the General Manager, Southern Railway, Madras, and quashing the order made therein placing the petitioner under suspension.

In the High Court of Judicature at Madras.

Special Original Jurisdiction.

Friday the third day of December
One thousand nine hundred and fifty four.

PRESENT

The Honourable Mr. Justice Balakrishna Ayyar.

Writ Petition No. 507 of 1954

R. Ananthanarayanan ... *Petitioner*

VS

The General Manager, Southern Railway, Park Town, Madras. ... *Respondent.*

Petition under Art. 226 of the Constitution of India, praying that in the circumstances stated in the affidavit filed therewith the High Court will be pleased to issue a Writ of Certiorari, calling for the records relating to the proceedings instituted against the petitioner herein under No, PBE/Con/82 dated 15—7—1954 on the file of the General Manager, Southern Railway, Madras and QUASH the said proceedings or to issue a Writ of Mandamus directing the respondent herein to forbear from taking any proceedings against the petitioner herein, under the said P.B.E./Con/82 dated 15—7—1954:

ORDER: This petition coming on for hearing on Thursday the 18th, Friday the 19th and Friday the 26th days of November 1954 upon perusing the petition and the affidavit filed in support thereof, and the Order of High Court dated 30-7-1954 and made herein, and the counter affidavit and the reply-affidavit filed herein and other papers

aterials to this application and upon hearing the arguments of Mr. S. MOHAN KUMARAMANGALAM for M/s Row & Reddy, Counsel for the petitioner, and of Mr. C. Govindaraja Ayyangar, Advocate for the respondent and having stood over for consideration till this day THE COURT MADE THE FOLLOWING ORDER:

Writ Petition No. 507 of 1954.

In Jnnuary 1954, the petitioner was an Assistant Bridge Inspector in the employ of the Southern Railway. Under the rules then in force disciplinary action against such an employee could be taken in one of the following ways:—

(1) Under Rule 148 of the Railway Establishment Code his services could be terminated by notice (or salary in lieu of notice) of a specified duration:

(2) One or more of the punishments enumerated in Chapter XVII of the Railway Establishment Code could be imposed on him for misconduct proved in the manner provided in the chapter.

(3) Under the Railway Services (Safeguarding of National Security) Rules, 1949, his services could be terminated for what has been described as subversive activities.

On 25--1--1954 the General Manager of the Southern Railway wrote to the petitioner intimating him that it was proposed to take action against him under the Railway Services (Safeguarding of National Security) Rules, and requiring him to say whether he wished to proceed on such leave as was due to him On 18--2--1954 the petitioner replied that he was surprised at the Communication that had been sent to him, that he was ignorant of the grounds on which it was proposed to take action and that there was

no provision in the Rules whereby he could be compelle to go on leave. However, without prejudice he asked fo 15 days leave to be granted to him. No order granting leave appears to have been issued. On 15—3—1954 the General Manager of the Southern Railway issued a notice to the petitioner telling him that in the opinion of the "competent authority" there were reasonable grounds for believing that the petitioner was engaged in subversive activities and that consquently his services were liable to be terminated. Six grounds were then set out as the basis of the proposed action. He was required to state within 14 days of the receipt of the notice "whether he accepted or denied the accuracy of the above allegation; and if he did not reply within the above period, it would be assumed that he admitted the allegation". He was also told that within the period of 14 days he might submit any representations he might desire to make as to why his services should not be terminated. On 21--3-1954 the pettitioner was placed under suspension. While the proceedings issued in persuance of the notice dated 15—3—1954 were still pending, a new set of rules came into force. Those are called the Railway Services (Safeguarding of National Security) Rules, 1954. So on 15—7—1954 a fresh notice was issued to the petitioner under the new rules. There is no material difference between the notice issued on 15—3—1954 and notice issued on 15—7—1954 and the annexure thereto. On 26—7—1954 the petitioner came to this court praying for the issue of a writ of Certiorari to quash the proceedings instituted on the basis of the notice dated 15th July 1954 and in the alternative, for the issue of a writ of mandamus directing the respondent to forbear from taking any further proceedings against him on the basis of that notice.

Learned counsel for the respondent took the preliminary objection that the petition is premature. Accordin g

to him, the petitioner has so far suffered no injury and he is bound to wait till the President has passed orders under Rule 3 of the Rules of 1954. According to him, the petitioner cannot seek the protection of this court, when the disciplinary enquiry against him is still pending. Now the circumstances that disciplinary proceedings are pending would very frequently be treated by this court as a good ground for refusing to interfere, but such a circumstance is not an obsolute bar and does not deprive this court of its jurisdiction to act in appropriate instances. In the present case the petitioner has been suspended from his duties and therefore he has been actually and substantially hurt. To say that he has not peen injured and that, therefore he has no right to come to this court is to ignore realities.

Reference may be made here to the decision in HIMMATLAL HARILAL METHA V. STATE OF MADHYA PRADESH (1) The facts there were these: The appellant represented a company registered under the Indian Companies Act, having its head office at Bombay and several branches in the state of Madya Pradesh. For the quarter ended 31st March 1951, the appellant declined to pay the tax in respect of the purchases made during that quarter on the ground that the transactions could not be made legally liable for payment of the tax in the State of Madya Pradesh; but apprehending that the company might be subjected to payment of tax without authority of law, the appellant preferred an application in the High Court of Judicature, Nagpur, praying for an appropriate Writ or Writs which may secure to the company protection from the impugned Act and its enforcement by the State. For various reasons the High Court dismissed the application. On appeal the Supreme Court stated:—

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(1) (1954) S. C. J. Page 445

"In our opinion, the contentions raised by the learned Advocate-General are not well founded. It is plain that the state evinced an intention that it could certainly proceed to apply the penal provisions of the act against the appellant, if it failed to make the return or to meet the demand and in order to escape from such serious conseqences threatened without authority of law, and infringing fundamental rights, relief by way of a writ of mandamus was clearly the appropriate relif.

In that case the writ was issued even though no wrongful act had been actually committed but had been only threatened. The present is on a FORTIORI CASE since the petitioner has been actually suspended.

In order to understand the contentions of Mr. Mohan Kumaramangalam, who appeared for the petitioner, it is necessary to examine some of the provisions of the Railway Services (Safeguarding of National Security) Rules, *1954*. These Rules are eight in number. The first one is a prefatory and the second one contains a number of definitions. Rule 3 runs as follows :—

"Where the President is of opinion that a Member of the Railway Service is engaged in or is reasonably suspected to be engaged in subversive activities or is associated with others in subversive activities and that his retention in the public service is on that account prejudicial to national security, the President may make an order compulsorily retiring such a person from service or terminating his services after he has been given due notice or pay in lieu of such notice in accordance with the terms of agreement of his service or under Rule *148* of the Indian Railway Establishment Code, Vol I"

Paragraph (a) of Rule 4 requires that before an order under Rule *3* is made, the "competent authority", shall

by notice in writing, inform the Member of the Railway Service of the action proposed to be taken against him and give him an opportunity to make to the President, his representations. Paragraph (b) of Rule *4* requires the President to take into consideration any representations so made. Rule 5 imposes an obligation on the "competent authority" to place under suspension a Member of the Railway Service against whom it is proposed to take action under these rules. The proviso to the Rule is that the member, if he so desires, may proceed on such leave as may be due to him before he is actually suspended. Rule *6* excludes the operation of Chapter XVII of the Railway Establishment Code, Volume I. Rule *7* excuse the President from consulting the Union Public Service Commission in respect of on order passed under the Rules. Rule *8* deals with questions of compensation pension, gratuity etc. in respect of a person compulsorily retired, or whose services are terminated under the rules.

The arguments of Mr. Mohan Kumaramangalam in relation to these rules may be thus summarised. Art *14* of the Constitution prohibits discrimination or differential treatment between citizen and citizen except on the basis of reasonable classification. The prohibition extents not merely to matters which may be regarded as involving subtantive rights but also to matters of procedure (See State of Madras V. V. G. Rao (*2*) What is reasonable classification would depend on the purpose the enactment seeks to attain, the class of persons whom it affects the correspondence between the purpose of the enactment and the previsions thereof, the situation existing at the relevant time and various other facts. The enactment should show what the basis of the classification is and its rationable. In State of West Bengal V. A. A. Sarkar (3) it was observed :

(*2*) (*1952*) S. C. J. Page *255* at *258*

(*3*) (*1952*) S. C. J. Page *55* at *91*

"Of course there may be certain offences whose trial requires priority over the rest and quick progress, owing to their frequent occurance, grave danger to public peace or tranquility, and any other special features that may be prevelent at a particular time in specified area. And when it is intended to provide that they should be tried more speedily than other offences, requiring in certain respects a departure from the procedure prescribed for the general class of offences, it is but reasonable to expect the Legislature to indicate the basis for any such classification. If the Act does not state what exactly are the offences which in its opinion need a speedier trail and why it is so considered, a mere statement in general words of the object sought to be achived, as we find in this case, is of no avail because the classification, if any, is illuslive or evasive. The policy or idea behind the classification should atleast be adumbrated, if not stated, so that the court which has to decide on the constitutionality might be seized of something on which it could base its view about the propriety of the enactment from the standpoint of discrimination or equal protection".

The class for which special provision is made must be well defined. (State of Bombay V. Balsara) (4):

In the present case the only clue we have to the attempted classification consists of the expression 'Subversive activities". That is a very vague expression. Ideas which within living memory were regarded as subversive are now part of the law of the land.

Provision for dealing with conduct of the kind attributed to the petitioner already exists in Chapter XVII of the Railway Establishment Code; and to single out cases of the present kind involves a tranagression of the provisions of

(4) (1951) S. C. J. 478

the constitution which prohibits discrimination. The decision in SURAJ MALL MEHTA & Co V-VISWANATHA SASTRI (5) directly applies. That case arose out of Sub-section (4) of Sec. 5 of the Taxation of Income (Investigation Commission) Act (XXX of 1947). The second paragraph of the headnote of the case sets out everything that is now relevant:

"Both section 34 of the Indian Incometax Act and sub-section (4) of Section of Act XXV of 1947 deal with all persons who have similar characteristics and similar properties, the common characteristics being that they are persons, who have not truly disclosed their income and have evaded payment of taxation on income. There are substantial differences between the procedures under Sec. 34 of the Incometax Act and Section 5 (4) of the Act XXX of 1947 and the different procedure under the latter operates to the detriment of persons dealt with. Accordingly sub-section (4) of Section 5 and the procedure prescribed by Act XXX of 1947 in so far as it affects the persons proceeded against under that sub-section being a piece of discriminatory legislation offends against the provisions of article 14 of the Constitution and is thus void and unenforceable. Thus Mr. Kumaramangalam.

On the other side, it was replied that rule 3 is not so vague as it was stated to be. It does not speak merely of subversive activities but only of subversive activities prejudicial to national security. That said Mr. Govindaraja Ayyangar, is a readily comprehensible category of misconduct and regard being had to its nature there is nothing unreasonable in special provisions being made for dealing with any kind of misconduct that falls within that category.

Notwithstanding the explanation offered by Mr. Govindaraja Ayyangar, one cannot avoid the feeling that there is some force in the criticism of Mr. Mohan Kumara-

(5) (1954) S. C. J. Page 611

mangalam, that Rule 3 is loosely worded and that it lacks definiteness. In order to be classed as subversive, has the act to involve violence to person or to property or incitement to such violence? The rule does not say anything. Again, in order to be classed as subversive, has the act to involve a violation of any provision of law or abetment of such violation? Rule 3 does not say anything in the matter, Would the exposition of ideas with which the Government in power for the time being disagrees and which that Government might genuinely regard as projudicial to national security come within the scope of that rule? It is well known that Buddha and Mahaveera taught that all life is sacred and must not be taken. Supposing a railway employee being a Buddhist or a Jain or being persuaded that the tenets of Buddha and Mahaveera ought to be propagated were to take active steps to that end, would he come within the mischief of the rule 3. Now if a soldier or policemen were deeply imbued with the doctrine that under no circumstance should life be taken, then it is obvious that as a solider and as a policeman he would be of no use to the State. In fact, his being in the police or in the army might well be a very serious danger to the security of the state and the Nation. Be it remembered that not Buddha or Mahaveera alone taught the sanctity of life. Some of the original Chiristians also hold similar view. If as a consequence of a reaction to the horrors of war, such ideas were to spread or to be spread would persons holding those views or spreading such views come within the ambit of rule *3*? Several similar problems may be posed; but no guidance is laid down in Rule *3* for dealing with such questions. Nevertheless and in spite of my having said all this, it does not appear to me to be necessary to strike the rule down in its entirety. For, it seems to me that in spite of the omission of the necessary words, the rule is intended to cover oney cases which involve an infriagement of the law. In other words, what the rule does is this. Out of the numerous categories of unlawful activities, certain categories are picked out as those which involve a special element of danger to the national security. Everybody would recognise that passing

on information to a hostile foreign power would stand in a class entirely different from passing such information in ordinary gossip to people inside the country. Attempts to destroy the loyalty or sap the discipline of the army would stand in a class wholly different from spreading disaffection amongst the members of the civilian staff in civilian occupations. To prescribe a special procedure for dealing with acts and conduct unlawful in themselves and of a kind specialy dangerous to the security of the nation would. It seems to me, be defensible on the principle of reasonable classification. Our entire criminal law proceeds on the basis of classification of offences. For trivial offences a summary procedure is prescribed; for those a little graver in character to summons case procedure is laid down; for offences still more serious the warrant case procedure is prescribed; and finally for offences which entail the capital sentence we have a regular trail in a court of sessions. Again the gravity of an offence would vary according to the nature of the position which the offender holds at the time of its Commission. Disobedience to an order in times of peace in a civilian office would be in an entirely different category from disobedience to an order by a soldier in the presence of the enemy. A person in the position of the petitioner who plants a bomb under railway bridge cannot claim to be dealt with in the same manner as sameone not charged with the duty of reporting on the safety of bridges. I do not consider that the classification of conduct into those categories which involve a danger to the national security and those which do not involve such danger is an unreasonable classification. But then as I have already stated all this is on the basis that rule *3* is understood in the sense that it comprises only activities which are unlawful; and understood in that way the rule would lose most of its indefiniteness and be reduced to a shape to which just exception cannot be easily taken. In any other view it woult be difficult to uphold that rule.

It is necessary to make one or two further observations about the scope of rule *3*. Before a person can be

punished by virtue of that rule, one of three things must be established: (*1*) he must be engaged in subversive activities which are prejudicial to national security; or (*2*) He must be reasonably suspected of being so engaged; (*3*) he mest be associated with others in such activities. This last point requires clarification. What is made punishable is not association with persons who engage in subversive activities; what is made punishable is association in *their subversive activities.* A person cannot be punished under this rule because he dines or plays cards or is on visiting terms with persons who engage in subversive activities. He must be associated with them in their subversive activities. This is an important distinction but one that may not be noticed and therefore ingnored. It will also be appreciated that a subversive activity must occur in some particular and at some particular time, or in particular places and at particular times.

These considerations bring me to the next criticism of Mr. Mohan Kumaramangalam. His complaint was that what may be called the charges framed against the petitioner are so vague that it is not reasonably possible to answer them. This criticism seems to me to be quite pertinent. The annexure to the notice issued by the General Manager, Southern Railway under date *15—7—1954* sets out what may be called six charges. The first one reads:—

> "You are a member of the cummunist party of India and of the communist-controlled S. I. Railway Labour Union, Golden Rock."

This particular charge of course does not lack definiteness since it speaks in the present tense. But then in July 1954 which is the date to which this charge must be referred, the communist party was a perfectly lawful party and I presume the Labour Union too. There is

nothing unlawful in a person being a member of that party, or in his being a member of the South Indian Railway Labour Union. It must be emphasised that though several members of the communist party may be guilty of activities which are both unlawful and subversive, the membership of the party does not necessarily involve association in those subversive activities. As I tried to explain earlier, Rule 3 can be upheld only on the basis that it prohibits unlawful activities alone. So charge No. I does not furnish any basis for taking disciplinary action against the petitioner.

Charge No. 2 reads :

> " You are in touch with the polit Bureau Secretariat of the Communist party, Bombay."

This charge is as vague as words can make it, What was the nature of the contact between the petitioner and the Polit Bureau? Did he write to them asking them to take steps to blow up bridges or incite disaffection in the army or to rob treasuries? Did he write to them at all and if he did, what did he write and when did he write? The charge says nothing at all. Being 'in touch' does not involve association in subversive activities. In fact a person may be in touch and very strongly dissuade others from subversive activities. It is impossible to suggest that being 'in touch' necessarily involves instigation or abetment of any subversive activity.

The third charge reads :

> " You contributed articles to communist organs criticising the Government of India and the Railway adminis-tration with a view to spread discontent and disaffection among railway staff".

Anybody accustomed to any form of legal procedure would read this charge with mixed feelings. What are the articles which the petitioner contributed to the communist organs? When did he contribute them? Where were those 'organs' published? Criticism of the Government and of the railway administration does not necessarily involve the spread of discontent and disaffection among the Railway staff. If it was intended to proceed against the petitioner in respect of particular articles then, those articles or the offending portions of those articles should have been specifically referred to in the charge. Mr. Govindaraja Ayyengar explained that the petitioner wrote the articles, that therefore he knows what the charge refers to and that therefore he cannot, complain that the charge is vague. I cannot possibly accept this explanation. By way of analogy suppose a Superintendent or Asst. Secretary in the Govt's Secretariat were to be charged in terms like these; 'your notes reveal communal bias and dishonesty'. Without anything more how could the official possibly meet this charge? Before anybody could even attempt to meet the charge, he would require information as to the particular note or notes which formed the subject matter of the charge. It is only then that he would be able to explain that the note was a ***bonafide*** one supported by the papers on record. If charges of this kind were to be held as sufficient no Government Employees can be confident of remaining in service beyond the week.

Charge 4 runs:

> "You spread the doctrine of communism among the public and railway staff."

To the questions which the petioner is entitled to ask in relations to the charge as to when, where, and how he spread the doctrines the charge gives no answer. Besides

charge, it strikes one as most extraordinary. If a ;son could be dealt with on this ground every Librarian n our Universities and in our Colleges who issues a copy of Karl Marx or Engels would be liable to disciplinay action because by issuing the books he spreads the doctrine of communism.

Charges 5 and 6 run as follows :

" You collected funds for the Communist Party of India "

" You actively canvassed for communist party candidates in the last elections to the Legislative Assembly'

In respect of charge 5 it will be noticed that it does not say when the funds were collected or where the funds were collected or from whom they were collected. In respect of charge 6 it will be noticed that it does not say where the convassing took place or in favour of which particular candidate it took place. Did the petitioner tour all over India supporting every communist candidate in every constituency? or only particular candidate in particular area? It must also be remarked here that the party being a lawful party, there was nothing unlawful in either of these activities and in the absence of anything to show that the funds were collected to promote illegal subversive activities or that the candidates for whom the petitioner canvased were briefed to engage in unl awful subversive activities, the petitioner cannot be brought within the acope of Rule 3.

That the charge which a person is called upon to meet must be clear, precies and accurate has been laid down in a number of decisions, I shall for the moment forget the Criminal proceedure Code, IN RE RAJDHAR (6) was a case under the Bombay Public Security Measures Act. At pages 335 and 336 the court observed :

(6) A. I. R. 1948 Bom. 334;

"Therefore we must draw a sharp distinction betw
a ground which is outside the purview of the stat
and a ground which is bad because it lacks precisio
and accuracy. In the latter case the ground has to be
completely ignored as if no ground was furnished
at all".

See also Mani-Vs-District Magistrate, Mathurai (7). The necessity of precision was emphasised at page *319*.

"We are not concerned with the objects of a particular political party, nor are we prepared to accept the argument advanced on behalf of the applicants that the proceedings uuder the Act are actuated by political animosity and that therefore they are *malafide*. We are concerned only with the question whether the grounds communicated are definite and are such as would enable the applicant to present his case properly to the Provincial Government. No dates are given as to when and where the person concerned rediculed the policy of the Government..... The grounds are not outside the purview of the Act but are indefinite and vague".

Mr. Govindaraja Ayyengar argued that it is not open to a Court to examine the materials on the basis of which the President might come to the conclusion that a person arraigned under the rules has been guilty of subversive activity. To this Contention there are two or three answers. One is that in a sense the situation contemplated by this argument has not actually arison in the present case, because no findings have been given by the President on the charges framed against the petitioner. Secondly, to the complaint that the charges are too vague to permit of an explanation being offored in relation to them, it is not an answer to say that the correctness of the findings recorded cannot be canvassed in a court of law. Thirdly, I do not subscribe to the view that once a proper charge is

framed, the decision of the President recorded uuder Rule 3 is obsolute. No doubt, a court cannot substitute its own discretion or its own judgement for that of the President. But I have no doubt that it can examine the materials on which the accusation is founded and the explanation offered in order to ascertain whether the conclusion reached by the President is one which could possibly be reached by a reasonable person. This is only another way of saying that arbitrary or capricious or manifestly unfair decisions cannot secure immunity from judical review. If there is a fair and sufficientnexus between the materials on which the charge stands, the explanation and the conclusion the court cannot interfere. But it can certainly do where the procedure prescribed by the rules is merely used as a machinery for getting rid of an employee whose views are distasteful in the administration. (In this connection See Monohar -Vs- Government of Bombay (8) and THE STATE OF MADRAS -Vs- V. G, Row (2). It is necessary to bear in mind here that though Rule 3 speaks of the President and the opinion of the President, actually it would not be the President who would personally examine the evidence in support of the charges and the explanation offered by a person placed in the position of the petitioner but someone else an officer or committee, to whom under the rules framed for the bespatch of business, the powers of the President in this regard have been delegated.

Mr. Mohankumaramangalam raised another point. In the notice issued to the petitioner on the 15th July 1954 the General Manager stated :

> "……consequently it is proposed to terminate your services in terms of rule 148 of the Indian Railway Establishment Code, as provided for in Rule 3 of the Railway Services (Safeguarding of National Security) Rules, 1954 … … …",

This said Mr. Mohan Kumaramangalam, is most extraordinary procedure. Even before the explanation of the petitioner had been reeeived, the General Manager was in effect and substance telling the petioner that it was proposed to terminate his services. This is clear evidence that tbe administration had decided to send the petitioner out of service whatever his explanation might be. I am reluctant to suppose that the railway administration was acting in so *malafide* a manner. The probability is that they were only trying to eliminate delays by sending up the explanation of the petitioner in relation not merely to the charges framed against him but also in relation to the proposed punishment so that the entire papers might be before the appropriate authority in Delhi at one and the same time. Nevertheless in must be recognised that the procedure actually adopted is calculated to arouse just apprehension in the mind of a person placed in the position of the petitioner. Though the analogy does not entirely hold, the position would be somewhat like that of a Judge telling a prisoner before the evidence is called that if the Jury were to brlng in a verdict of guilty he would send him to jail for seven years. It is a cardinal rule of judicial administration that justice must not only be done but must also manifestly appear to be done. Though in its strictness the rule may not apply to quasi judicial proceedings, it is a salutary one and may well be adopted by all quasi judicial bodies with visible advantage. The proper procedure in a case of this kind would be first to obtain the explanatian of the petitioner and then arrive at a finding whether the charges are proved or not. The question as to what punishment should be imposed should be taken up only after the conclusion has been reached that the charges have been made out.

Mr. Govindaraja Ayyengar finally stated that the petition as framed is bad and must fail. He pointed out that the prayer in the petition is for the issue either of a Writ fo Certiorari or the issue of a Writ of Mandamus; and

that neither Writ is suitable or appropriate to the present case. I do not think that the petition can be disposed of on so technical a point. Our constitution does not incorporate all the severe technicalities of the English Law relating to the various forms of Writs "Article *226* of the Constitution empowers High Courts to issue "directions *orders* or writs including *Writs in the nature of* Hebeas Corpus, Mandamus, etc." It will not do to ignore the significance of the words underlined. The circumstances, therefore, that the petitioner has applied for a particular form of writ whereas he should have asked for a different kind of Writ or order does not preclued the Court from moulding the remedy to the circumstances of the case. (See in this connection Basappa-Vs-Nagappa (*9*) at page *699* it is observed:

> "In view of the express provisions in our Constitution we need not now look back to the early history or the procedural technicalities of these Writs in English Law, nor feel oppressed by any difference or change of opinion expressed in particular cases by English Judges. We can make an order or issue a Writ in the nature of CERTIORARI in all appropriate cases and in appropriate manner, so long as we keep to the broad and Fundamental principles that regulate the exercise of jurisdiction in the matter of granting such writs in English Law."

In the result, the petition is allowed and a writ will issue quashing the order placing the petitioner under suspension and also the charges framed against him. The petitioner will get his costs, Advocate's fee Rs. *250/-*.

(*Sd.*) K. Srinivasa Iyengar,
Assistant Registrar, A. S.
16—12—54.

[True copy]

(*9*) 1954 S. C. J. 695 at 699.

(*Sd.*)

Sub-Assistant
Registrar, A. S.

(True copy)

To.

1. The General Manager, Southern Railway,
Park Town, Madras.
(with records) (with Writ absolute)

2. M/S. Row & Reddy, Counsel for the petitioner one C. C. of the order and Writ Absolute on payment of necessary charges.

SOUTHERN RAILWAY.

No PBE-CON-139

Headquarter's Personnel Branch
General Manager's Office,
Madras. 28th December 1954.

Shri. R. Anantanarayanan,
Assistant Bridge Inspector
(under suspension).
Southern Railway, Pakala.

Your letter dated 7—12—1954.

In view of the Judgement of the Madras High Court in Writ Petition No. 507 of 1954, the District Engineer, Bellary is being asked to take you back to duty, terminating your suspension.

(Sd.)
for General Manager.

(True Copy)

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